

ST 00/0052-GIL 03/16/2000 MANUFACTURING MACHINERY & EQUIPMENT

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. (This is a GIL).

March 16, 2000

Dear Xxxxx:

This letter is in response to your letter received February 16, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, we respectfully request a technical advice letter ruling concerning the taxability of the following issues for sales and use tax purposes.

**Facts:**

Taxpayer is a manufacturer of petrochemical products in Illinois. This process involves a series of refining operations involving chemical mixtures and reactions to produce a final product.

**Issue I:**

Taxpayer takes delivery of liquid chemical compounds at a receiving dock on the Illinois River. These raw materials are off-loaded from river barges through a series of underground pipes and pumping mechanisms, which transport the liquids to monomer and pentane (chemical compounds) tanks. Upon receipt of each delivery, an equalization process is performed in the monomer and pentane tanks which blends the materials to ensure molecular equalization. A series of valves and piping are regulated to blend the materials to achieve this equalization. The compounds are then transported to the next step in the refining process depending on the type of product being manufactured.

**Law:**

Pursuant to Title 86: Part 180 of the Retailers' Occupation Tax, Section 130.330(b)(2), the manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining

which changes some existing material or materials into a material with a different form, use, or name. These changes must result from the process in question and be substantial and significant.

Pursuant to Chapter 35 ILCS 120/2-45, Section 2-45(1), the manufacturing process commences with the first operation or stage of production in the series and does not end until completion of the final product in the last operation or stage of production in the series.

**Taxpayer s Contention:**

The equalization process, which takes place upon receipt of new raw materials in the monomer and pentane tanks, constitutes the first stage of production in the manufacturing process. The equalization process is necessary and essential to ensure raw material consistency in each of the subsequent production stages. Pursuant to the above cites, Taxpayer believes the monomer and pentane tanks, along with all conveying equipment on the outlet side (conveying compounds to the next production stage) qualify for the manufacturing machinery and equipment exemption. Taxpayer recognizes that all conveying equipment on the receiving side of the tanks do not qualify, as such equipment would be pre-production equipment.

**Issue II:**

The chemical compounds delivered into the monomer/pentane tanks are toxic chemicals. These tanks have specially designed construction in order to conform to EPA standards for hazardous material containment. Each tank consists of a series of double bottoms with specialized monitoring equipment to detect any leakage of materials.

**Law:**

Pursuant to Title 86 Part 130, Section 130.335(a), Pollution Control Facilities, the phrase pollution control facilities 'means any system, method, construction, device, or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term 'pollution' is defined in the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111, pars. 1001 et seq.), or for the primary purpose of treating,...which if released without such treatment,...might be harmful, detrimental, or offensive to human, plant, or animal life, or to property.'

**Taxpayer s Contention:**

The monomer and pentane tanks holding the raw materials (chemicals) in the initial stage of production also qualify as pollution control facilities, in the fact they are preventing air, water and ground pollution. The specially designed tanks prevent

leakage of the chemicals into the atmosphere or nearby water supply of the Illinois River.

**Summary:**

We respectfully request a written response to the above contentions be forwarded at your earliest convenience. Your prompt attention to this matter is greatly appreciated.

We are unable to grant you the ruling you requested in the context of a General Information letter. Because of the technical nature of your request, the Department would need the type of factual information required by a Private Letter Ruling to make a determination. We are unable to determine the exact and complete nature of the manufacturing process you describe to determine when the manufacturing process begins.

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330, enclosed. The exemption also extends to repair and replacement parts as long as the parts are incorporated into machinery and equipment that is exempt under the regulation.

"Manufacturing" is defined as the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, which changes some existing material or materials into a material with a different use, form, or name. These changes must result from the process in question and be substantial and significant.

Generally, the use of machinery or equipment to effect a direct and immediate physical change upon the tangible personal property to be sold will be considered to constitute an exempt use under the manufacturing machinery and equipment exemption. Hand tools do not qualify for the exemption. However, pneumatic hand tools or electric powered hand tools used primarily in manufacturing or assembling may qualify for the exemption.

Please note that the use of machinery and equipment to convey, handle, or transport tangible personal property to be sold within production stations on production lines or directly between such production stations or buildings within the same plant qualifies for the manufacturing machinery and equipment exemption. See 86 Ill. Adm. Code 130.330(d)(3)(D).

This exemption does not extend, however, to machinery or equipment used to store, convey, handle or transport materials or parts or sub-assemblies prior to their entrance into the production cycle. See Section 130.330(d)(4)(C). Nor does the exemption extend to machinery or equipment used to store, convey, handle or transport finished tangible personal property after the completion of the production cycle. See Section 130.330(d)(4)(D).

Machinery and equipment may qualify for the exemption where they are used to inspect, test, or measure the tangible personal property to be sold where such function is an integral part of the production flow. See Section 130.330(d)(3)(C). Please note that the testing must take place as an integral part of the production flow.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.335 concerning Pollution Control Facilities. The pollution control facilities exemption extends to "any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "pollution" is defined in the Environmental Protection Act (415 ILCS 5/1 et seq.), or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property."

No items qualify for the Pollution Control Facilities exemption in and of themselves. No transactions are exempt on the basis of the pollution control exemption unless certifications are obtained as described in 86 Ill. Adm. Code 130.335(a) of the Department's rules. Items that can be used in both qualifying and non-qualifying activities must be used in qualifying activities before the exemption has application.

It appears from the limited information contained in your letter that the primary purpose of the monomer and pentane tanks is to perform the equalization process you describe in Issue I and not pollution control. If this is the case, the tanks would not qualify as pollution control equipment.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.